

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- v - : 07 Cr. 1173 (CM)

RENE J. GARCIA, JR., :

Defendant. :

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MEMORANDUM IN SUPPORT
OF MOTION TO SUPPRESS

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Assistant United States Attorney

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Preliminary Statement

This memorandum is respectfully submitted in support of defendant's motion to suppress evidence – including but not limited to an inoperable handgun – which was seized by police officers from the City of Mount Vernon incident to a warrantless encounter with the defendant on October 12, 2007.

Background

Rene J. Garcia, Jr., is charged as a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e).¹ The charged is based on the October 12, 2007 seizure of an inoperable handgun from the defendant incident to a warrantless encounter with the Mount Vernon police. The defense seeks suppression of the handgun on the ground that this evidence was obtained through a violation of the defendant's Fourth Amendment rights.

Argument

The Government bears the burden of establishing the lawfulness of a warrantless seizure. See United States v. Carhee, 27 F.3d 1493, 1496 (10th Cir. 1994). Here, the defendant was approached by the police, and was detained and searched without a warrant. Accordingly, all

¹Pursuant to the § 924(e) allegations, the defendant faces a 15 year mandatory minimum sentence.

evidence obtained by the police as a result of this encounter should be suppressed, or, in the alternative, this Court should hold a hearing to determine the admissibility of the evidence.

Conclusion

For all these reasons, defendant's motions to suppress should be granted in all respects.

Dated: White Plains, New York
February 29, 2008

Yours, etc.

LEONARD F. JOY, ESQ.
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